

MEMORANDUM FOR THE RECORD

3 June 1952

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Authority of the CIA to make Excepted Appointments under Civil Service Rule VI

1. A question has been raised as to the source of authority of this Agency to appoint its personnel to excepted positions under Schedule A-6.116(b) of Civil Service Rule VI.

2. Under the provisions of Revised Statutes 1753 (5 USCA 631), the President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof. The civil service has been stated to consist of "persons in the employ of the government whose services are special being rendered to it as a government and whose salary or pay is directly fixed or indirectly limited by law." (Baker v. U. S. (1868) 4 Ct. Cl. 227.)

3. Under the authority of Section 1753 of the Revised Statutes, by the Civil Service Act of January 16, 1883, and as President of the United States, the President on February 24, 1947 issued Executive Order 9830 entitled, "Amending the Civil Service Rules and Providing for Federal Personnel Administration," Part I of which provided, among other things, that the head of each agency, in accordance with applicable statutes, Executive Orders, and rules, shall be responsible for personnel management in his agency and shall designate an official to represent him in such matters. Part II amended the Civil Service Rules, including "Rule VI - Exceptions From the Competitive Service," and in Section 6.1(a) provided thereunder that where it is not practicable to make appointments through competitive examinations, the positions named in Schedules A and B of Section 6.4 shall be excepted from the competitive service. It is further provided in 6.1(a) that upon publication in the Federal Register of the Commission's determination excepting positions from the competitive service, appointment thereafter might be made to such positions in the same manner as under Schedules A and B and that an appointing officer in his discretion might fill any position in Schedule A or B or any position excepted from the competitive service by statute in the same manner as competitive positions are filled. It is apparent that the words, "an appointing officer," do not refer to an officer of the Civil Service Commission but rather to an officer of the government agency appointing a person to an excepted position. Section 6.4(a) lists the positions excepted, and Subsection 20 specifically includes all positions in the Central Intelligence Group.

4. By C.F.R. Supplement 1947, page 259, Subsection 20 of Executive Order 9830 was revoked and a new Subsection 20 was added, effective 25 September 1947 (12 F.R. 6353) which referred to all positions in the Central Intelligence Agency. It was specifically stated in the F.R. that the amendment was made in accordance with the request of the Secretary of Defense. This apparently was done by him in order to comply with the National Security Act of 1947 (26 July 1947) whereby the personnel of the Central Intelligence Group were specifically transferred to the new CIA.

5. A further amendment was made to Subsection 20, dated 14 October 1947 (12 F.R. 6733), whereby the reference to the CIA as an excepted agency was changed to Subsection 45. The whole of subsection 20 referred to the Department of Defense and the redesignation to Subsection 45 was apparently made to place the CIA in its proper setting with the National Security Council as set out by the National Security Act of 1947. The authority given for this redesignation was Section 6.1(a) of Executive Order 9830.

6. The rules as later amended by the Commission were published in 13 F.R. 8237 (24 February 1947) and appear in 5 C.F.R. as well as in Civil Service Commission Pamphlet 2 of January 1951 attached hereto. The CIA is excepted in Section 6.116(b), the change having been made in order to conform to the new style of the C.F.R. 1949 edition.

7. The Civil Service Rules prescribed by the President under express statutory authority have been held to have the force of law and to be a part of the Civil Service laws (1937, 39 Op. Att. Gen. 50).

8. It should be further pointed out that although Executive Order 9830 has been amended occasionally, the appointing power contained therein has not been affected.

9. Accordingly, the authority of the CIA to make excepted appointments stems from Civil Service Rules, Rule VI, Schedule A.

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Attachment:

Pamphlet 2, CSC, January 1951

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Distribution:

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